

REMARKS

I. Status of Claims

Claims 1-5 and 7-17 are pending in this application. Claims 1 and 16 are currently amended. Support for the amendments to claim 1 may be found in, for example, the specification, page 11, line 6 to page 12, line 2. Independent claim 16 has been amended in a manner similar to claim 1. Claims 18 and 19 are newly added. Support for new claims 18 and 19 can at least be found in the specification, page 11, line 6 to page 12, line 2 and page 12, line 29 to page 13, line 9.

Claims

1-5 and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaller et al. (U.S. Patent 6,948,311) in view of Tashiro et al. (U.S. Patent 6,622,480).

Claims 7-9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaller et al. in view of Tashiro et al. as applied to claim 1 above, and further in view of Christen et al. (U.S. Patent 6,405,528).

The Applicant respectfully requests reconsideration of the rejections in view of the foregoing amendments and the following remarks.

II. Pending Claims

Claims 1 and 16, the only independent claims, stand rejected under 35 USC 103(a) as allegedly being unpatentable over Schaller in view of Tashiro.

The Applicant respectfully submits that claim 1 is patentable over the cited references at least because it recites, *inter alia*, "...a setting section, wherein, when the comparing section determines that the pressure difference exceeds the pressure difference reference value, the setting section determines that particulate matter is not sufficiently burned and is likely to remain and sets the manner of adding fuel of the fuel adding device to intermittent fuel addition such that the temperature distribution of the exhaust purifying mechanism is suppressed from being uneven." (emphasis added)

The Applicant respectfully submits that claim 16 is patentable over the cited references at least because it recites, *inter alia*, “...setting the manner of adding fuel to intermittent fuel addition such that the temperature distribution of the exhaust purifying mechanism is suppressed from being uneven when it is determined that the pressure difference exceeds the pressure difference reference value and a setting section determines that particulate matter is not sufficiently burned and is likely to remain.” (emphasis added)

With respect to independent claim 1, this claim has been amended to clarify that, when the comparing section determines that the pressure difference exceeds the pressure difference reference value, the setting section determines that particulate matter is not sufficiently burned and is likely to remain and sets the manner of adding fuel of the fuel adding device to intermittent fuel addition such that the temperature distribution of the exhaust purifying mechanism is suppressed from being uneven.

Similarly, claim 16 is amended to recite that when it is determined that the pressure difference exceeds the pressure difference reference value, a setting section determines that particulate matter is not sufficiently burned and is likely to remain such that the temperature distribution of the exhaust purifying mechanism is suppressed from being uneven.

Comparatively, Schaller states that “it is advantageous if, after shutting off the additional fuel metering, it is periodically switched on and off again. By doing this, a decrease in the temperature during regeneration may be prevented.” *See* col. 7, lines 22-25, of Schaller. That is, Schaller merely discloses that the additional fuel metering is periodically switched on and off again to prevent a decrease in the temperature during regeneration. However, it is respectfully submitted that, Schaller fails to disclose that, when the comparing section determines that the pressure difference exceeds the pressure difference reference value, the setting section sets the manner of adding fuel of the fuel adding device to intermittent fuel addition such that the temperature distribution of the exhaust purifying mechanism is suppressed from being uneven.

The Applicant respectfully maintains that neither Schaller nor Tashiro support the position that it would have been obvious to one of ordinary skill in the internal combustion art at the time of the invention to modify Schaller to save fuel and to protect a filter from thermal damage during regeneration. Rather, the Applicant respectfully submits that none of the cited

references describe a exhaust purification apparatus/method as claimed in the inventions of claims 1 and 16 and that the Office Action is using hindsight to pick features of references without providing any reason in the prior art itself for making the alleged combination. See KSR Int'l Co. v. Teleflex, Inc., 127 S. Ct. 1727 (2007). Thus, the Applicant respectfully submits that the Office Action's conclusion of obviousness is based on improper hindsight reasoning.

Therefore, the Applicant respectfully submits that, for at least these reasons, claims 1 and 16, as well as their dependent claims, are patentable over the cited references.

III. Conclusion

In light of the above discussion, the Applicant respectfully submits that the present application is in all aspects in allowable condition, and earnestly solicits favorable reconsideration and early issuance of a Notice of Allowance.

The Examiner is invited to contact the undersigned at (202) 220-4420 to discuss any matter concerning this application. The Office is authorized to charge any fees related to this communication to Deposit Account No. 11-0600.

Respectfully submitted,

Dated: September 23, 2008

By: /Daniel G. Shanley/
Daniel G. Shanley
(Reg. No. 54,863)

KENYON & KENYON LLP
1500 K Street, N.W., Suite 700
Washington, D.C. 20005
Tel: (202) 220-4200
Fax: (202) 220-4201